IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.8868 of 2004

Bhikaji Babu Lad ..Petitioner

vs.

1. The Collector and Deputy Director for resettlement (Lands) and ors. ..Respondents

Shri P.D.Dalvi for petitioner
Shri V.P.Malvankar, A.G.P. for respondent nos. 1 to 3
Shri T.S.Ingale for respondent no.4.

CORAM: A.P.SHAH AND S.C.DHARMADHIKARI JJ
1st December,2004

P.C.

1. Heard Advocates.

2. The petitioner is a project affected person. The petitioner was allotted a land being Gat No.421 (new plot No.319) admeasuring 0.74 ares of Kasaba Shirol, Taluka Shirol, District Kolhapur and Gat No.903 admeasuring 0.22 ares at village Kabnoor, Taluka Hatkanangale, District Kolhapur and he was put in possession of the said land on 24th May, 2002. By order dated 16th January, 2004, the Collector alloted an area of 4000 sq.meters in Gat No.421 to a charitable Institution by name Late Vaidya Vyankatrao Yadav Karnabadhir Charitable Institute, Shirol for starting a school for deaf

and dumb students. By further order dated 12th February, 2004, the Collector cancelled the allotment made in favour of the petitioner. The petitioner filed two separate writ petitions challenging the order of the Collector direct allotment of part of the land to the charitable institution and directing cancellation of allotment in his favour. By order dated 1st July 2004, Division Bench set aside the impugned orders and directed the Collector to decide the matter afresh in accordance with law after affording an opportunity of hearing to the petitioner. Accordingly, the Collectror heard the parties and by order dated 30th September, 2004 confirmed the order of cancellation of allotment.

3. We have heard the learned Counsel appearing for the petitioner. The petitioner as a project affected person is entitled to allotment of agricultural land in accordance with the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986. The land in question is not an agricultural land but it is a waste land and under the development plan it is reserved for public and semi public purpose. Originally theland was reserved for timber market and thereafter the development plan was modified and the land is now reserved for public and semi public purpose. The

allotment in favour of the petitioner is thus in total violation of the provisions of Maharashtra Regional and Town Planning Act, 1966. In any event under the provisions of the Act of 1986 the petitioner is entitled to claim alternate agricultural land and not an urban land. When this mistake was noticed the Collector has directed cancellatiaon of allotment in favour of the petitioner. The Collector has also directed that the petitioner should be provided with alternate agricultural land from the pool of Resettlement Officer.

4. Shri Dalvi, learned Counsel for the petitioner urged that the Collector has no right to direct cancellation of allotment in favour of the petitioner. After the grant of land the petitioner has become occupant within the meaning of the Maharashtra Land Revenue Code, 1966 and there is no provision in the Code for taking back the land from the allottee. According to Shri Dalvi, proper proceedings for the Government to follow is to file a suit against the petitioner and on this ground alone the Collector’s order is not sustainable. In support of his argument Shri Dalvi relied upon the judgment of the Division Bench in Sambhaji Baloji Solankar BVs. The Mamlatdar of Baramati; 1952 Vol.55 BLR 281. The Division Bench judgment is

based on the provisions of sec.37 of the old Code. Under the new Code ample power is conferred on the Collector for taking action in such cases under sec.53. Therefore, the submission that the Collector has no power to cancel the allotment must be rejected. No other submission was made by Shri Dalvi. In the result the petition is dismissed.

5. The Collector is directed to make allotment of alternative land in favour of the petitioner as expeditiouslsy as possible and in any event within a period of eight weeks from today.